

JUVENILE JUSTICE IN GREECE

AN OVERVIEW AFTER THE NEW LEGISLATION OF 2019*

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ABSTRACT

The aim of this report is to give a brief overview of the Greek Juvenile Justice System in Greece as it has been established after the introduction of the new Penal Code and of the new Code of Criminal Procedure in June 2019. The report does not have a purely legal character, but it also contains data about the real situation of how legal provisions are implemented and about the quantity and quality of juvenile delinquency in Greece in recent years.

ΠΕΡΙΛΗΨΗ

Η εργασία αυτή στοχεύει να δώσει μια σύντομη επισκόπηση για το ελληνικό σύστημα του Δικαίου Ανηλίκων, όπως αυτό διαμορφώθηκε μετά την ψήφιση στην Ελλάδα του νέου Ποινικού Κώδικα και του νέου Κώδικα Ποινικής Δικονομίας, τον Ιούνιο του 2019. Η εργασία δεν έχει ακραιφνώς νομικό χαρακτήρα, αλλά περιέχει επίσης στοιχεία ως προς το πώς εφαρμόζονται πράγματι οι νομικές διατάξεις και ως προς την έκταση και το είδος της παραβατικότητας των ανηλίκων κατά τα πρόσφατα έτη.

Key-words: Juvenile Justice System, delinquent minors, special legislation, procedural rights, Convention on the Rights of the Child, juvenile courts, procedural rights, victim in juvenile court, educational measures, therapeutic measures, juvenile court aid, juvenile detention, diversion, conditional release, Correctional Code, detention on remand for minors, restrictive measures.

Λέξεις-κλειδιά: Σύστημα Δικαίου Ανηλίκων, παραβατικοί ανήλικοι, ειδική νομοθεσία, δικονομικά δικαιώματα, Σύμβαση για τα Δικαιώματα του Παιδιού, δικαστήρια ανηλίκων, το θύμα στο δικαστήριο ανηλίκων, αναμορφωτικά μέτρα, θεραπευτικά μέτρα, υπηρεσία επιμελητών ανηλίκων, περιορισμός σε ειδικό κατάσταση κράτησης νέων ή ποινικός σωφρονισμός, κατά παρέκκλιση διαδικασία, υφ' όρον απόλυση, Σωφρονιστικός Κώδικας, προσωρινή κράτηση ανηλίκων, περιοριστικοί όροι.

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I. Legal sources of the Juvenile Justice System in Greece

The main substantive law provisions concerning delinquent minors in Greece are contained not in an autonomous law on Juvenile Justice, but in the Penal Code (eighth and final chapter of the General Part, art. 121-133), under the title: “Special provisions for minors”. This Code was enacted in Greece in June 2019 (Law-Nr. 4619/2019), together with a new Code of Penal Procedure (Law-Nr. 4620/2019). Both replaced the previously in force respective Codes, which, however, had already been reformed before in relation to minors, mainly in 2003 and in 2010.

Apart from these special provisions anchored in (substantive and/or procedural) criminal law and applied as “lex specialis” in relevant cases, there are also provisions included in special legislations, such as those concerning TV broadcasts (e.g. art. 8 sec. 1 Presidential Decree 100/2000 and art. 12 & 13, Presidential Decree 77/2003). Besides, Greece has ratified all important international or European conventions, such as the UN Convention on the Rights of the Child (1989), the UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) and the European Convention on the Exercise of Children’s Rights (1996). Greece has also signed many instruments of soft law (Rules and Recommendations) of the United Nations and the Council of Europe.

II. Aims and Objectives

The principal objective of the Greek legislation on juvenile justice is to prevent repeat offending and, in particular, to ensure social integration, mainly through the education of minors and other welfare measures. Human rights of a minor, either accused or convicted, are equally a cornerstone of the juvenile system in Greece. Hence, the basic model of criminal policy which marks this system is a mixture of the welfare model with the justice model.

III. The Juvenile Courts

The sole judicial authority for ordering sanctions to juveniles when they infringe criminal law is the Juvenile Court. In ordinary cases, it consists of one judge sitting in Provincial Courts. In cases of felonies, for which a juvenile detention can be imposed (cf. *infra*, VIII), the court is constituted by three judges (art. 113 Greek Code of Penal Procedure – CCP). Both courts are composed exclusively by professional judges and are competent to try all offenses committed by minors, i.e., by those who were aged 12-18 at the time of the offense. Furthermore, there are Juvenile Courts of Appeal, consisting of three judges (art. 114 GrCPP).

IV. Legal guarantees for offenders and victims

A juvenile, as an accused, is guaranteed the same basic procedural rights as those to which accused adults are entitled: Among others (cf. art. 92 and 96 Greek Penal Code - GrCPP), the right to be heard before the court (art. 20 Greek Constitution) and the

principles of *nulla poena sine lege* (art. 7 sec. 1 Greek Constitution and art. 1 & 2 GrPC) and of *ne bis in idem* (double jeopardy – art. 57 GrCPP), the right to be present at the hearing (art. 92 GrCPP), the right to put forward questions (art. 94 GrCPP), the right to remain silent (art. 273 sec. 2 GrCPP) and the right to be defended by a public defense counsel (art. 89 and art. 99 sec. 3 GrCPP). Besides, he/she enjoys all rights which derive from the principle of fair trial (art. 6 of the European Convention on Human Rights and of art. 40 of the UN Convention on the Rights of the Child).

Furthermore, the minor's trial can be held in-camera ("closed doors"), including the promulgation of judgment (cf. art. 96 sec. 3 Greek Constitution).

On the other hand, the victim in juvenile court procedures, if he/she brings a civil action, becomes a party in the proceedings (art. 70, 89 ff. GrCPP) and, as a consequence, has mainly the same rights as the accused, especially if the offense is related to sexual freedom and sexual exploitation (cf. art. 108 GrCPP). However, the victim bringing a civil action before the Juvenile Court may usually claim only a symbolic compensation with a maximum of 44 euros, whilst further compensation must be claimed before the Civil Courts.

V. Main categories of minors and their treatment

It would be interesting, at this point, to examine the three main categories of minors and their legal treatment. Legally, there can be a distinction of ages up to 12, between the ages of 12-15 and between the ages 15-18; for the last two categories treatment has the form of educational or therapeutic measures, while for the last category (15-18) the treatment of juvenile detention may be imposed for some serious offenses. More specifically:

Minors up to the age of 12 are not mentioned in the new Greek Penal Law (until June 2019 the minimum age was 8) and, therefore, the system of sanctions (measures and juvenile detention) is not applicable to these children. If such persons commit an act punishable by law, the courts may only impose to the parents or guardians either civil measures related to parental custody (art. 1532 ff. Greek Civil Code) and/or penal sanctions for neglecting the supervision of their minors (art. 360 GrPC).

Minors between the ages of 12-15 (date of birth) are considered as not criminally responsible and the court can only impose to them educational or therapeutic measures (art. 126 sec. 1 GrPC).

VI. Educational and therapeutic measures

Educational measures are mainly non-custodial. They are gradated by the law according to the intensity of intervention and include measures such as the following (art. 122 sec. 1 GrPC):

- Reprimand

- Placing the minor under the responsible custody of parents or guardians
- Placing the minor under the responsible custody of a foster family
- Placing the minor under the custody of Youth Protection Associations, Youth Centers, or Juvenile Court Aid (to note that the Juvenile Court Aid also prepares for the court a social inquiry report on the situation and personality of the minor: art. 239 sec. 2 GrCPP).
- Mediation between the young offender and the victim
- Compensation of the victim
- Performance of community service
- Participation in social and psychological programs, etc.

From the above measures, courts usually inflict the ones of reprimand, parental care, juvenile court aid and, more recently, community service. In general, the court may always replace the educational or therapeutic measures by others or revoke them (art. 124 GrPC).

The most severe educational measure is undoubtedly the custodial one, i.e. placing the minor in a public educational institution. However, this measure is imposed rarely (only 4 persons up to 13 years and no one aged 14-18 in 2010)¹. Consequently, there is only one educational institution in whole Greece, namely in the city of Volos (Central Greece).

More specifically, as regards **therapeutic measures**, these are imposed when the minor's physical, psychological or mental condition necessitates special treatment, particularly in cases of mental illness and drug or alcohol dependency. Among these measures, some are similar to the above mentioned educational ones (parental care, juvenile court aid), whilst, in more serious cases, the minor can be placed in a therapeutic or other appropriate institution (art. 123 GrPC). These measures have been rarely applied by the courts. Instead, courts, which are mainly preoccupied in this domain by cases of drug dependency, apply in such cases the respective regulations of the special law on drugs (Law-Nr. 4139/2013).

Finally, **minors between the ages of 15-18** (date of birth) are regarded by the law as having relative criminal responsibility. They are principally subjected to educational or therapeutic measures, as is also the case for minors aged between the ages of 12-15.

¹ cf. the relevant statistical information for what follows [in Greek]: <http://www.statistics.gr/el/statistics/pop/> > Πληθυσμός και Κοινωνικές Συνθήκες> Ποινική Δικαιοσύνη and/ or Καταστήματα Κράτησης, and <http://www.ministryofjustice.gr/site/el/> > ΣΩΦΡΟΝΙΣΤΙΚΟ ΣΥΣΤΗΜΑ > Στατιστικά στοιχεία κρατουμένων

However, for specific serious offenses, the Penal Code foresees the punishment of detention in a young offenders' institution, or, simply, juvenile detention.

It is noteworthy that, in 2010, educational or therapeutic measures were imposed to 353 minors (341 boys and 12 girls aged 14-18) and to 4 boys up to 13 years old. At a more general level, concerning the trends of imposing educational or therapeutic measures during the last decades, we note a clear decline from 1998 (4,411 cases) to 2010 (1,256 cases). Similarly, regarding reoffending, we may speak of a fluctuating, but rather decreasing tendency, of the educational or therapeutic measures from 1998 (23 cases) to 2010 (4 cases).

VII. Young persons after the age of 18. Cases of diversion

There are specific provisions for minors who, at the time of sentencing or of enforcement of judgment, have already reached the age of 18 and also of young adults committing offenses between the ages of 18-25. More specifically:

If, at the time of sentencing, the juvenile has reached the age of 18 and has committed an offense after the age of 15, the court has the power, instead of ordering educational or therapeutic measures (which could be regarded in the specific case at issue as insufficient), to impose juvenile detention until the age of 25. This detention, in extreme cases, can be served in a separate section of a prison for adults (art. 130 GrPC).

Furthermore, if a person sentenced to juvenile detention reached the age of 18 before enforcement of the judgment, the court may order the young adult to serve his detention in a prison for adults (art. 131 GrPC).

Finally, if a young adult, at the time of committing an offense, has not yet reached the age of 25, the court may decide to impose juvenile detention or to impose mitigated imprisonment (art. 133 GrPC).

On the other hand, if a minor commits a misdemeanor, diversion can be applied in his case by the public prosecutor, who may decide not to begin proceedings, if he/ she believes that prosecution is not necessary to prevent minor from committing further offenses. However, the public prosecutor may impose on the minor one or more of the non-custodial educational measures (cf. *supra*, VI) (art. 46 GrCPP).

VIII. Juvenile detention

Juvenile detention is a *sui generis* punishment, the only one in Juvenile's Law. It is imposed only when educational measures are considered by the court as insufficient to prevent the juvenile from committing further criminal acts (art. 127 GrPC). Hence, juvenile detention must be only the last resort / *ultima ratio* (principle of subsidiarity).

According to what has been mentioned above, juvenile detention is imposed to minors who have reached 15 years of age and, thus, have relative criminal responsibility. Therefore, this kind of detention presupposes the establishment of the minor's criminal

liability. Furthermore, it is inflicted only when the juvenile has committed a felony (not a mere misdemeanor) and only if this felony has the element of violence or is directed against the life or corporal integrity of another person. Such felonies are mainly intentional homicide, fatal bodily harm, rape and robbery (respectively art. 299, 310, 336, 380 GrPC). No life imprisonment can be inflicted to minors, and the maximum of their detention cannot exceed 8 years (art. 54 GrPC). On the other hand, there is no detention commuted to fine. Equally, there is no suspended sentence of detention, yet, in my opinion, this regulation is not plausible from the point of view of criminal policy, given that the suspended sentence is a non-custodial measure and can indeed be useful also for juveniles.

As concerns jurisprudence, the courts are reluctant to impose a penalty of juvenile detention. According to the available statistics (cf. supra, note 1), only 35 juveniles aged 14-18 had been convicted to detention in 2010, which means 9.9 % of the total sanctions (measures and detention) imposed to minors and amounted to 353 cases of minors. On the other hand, 39 juveniles aged 14-18 (37 boys and 2 girls) were detained for juvenile detention in 2012, which means 2.6 % of the total number of detainees (of all ages) in this year, which was 15,128. However, there were also another 63 juveniles aged 14-18 (4.2 %), who served, during that year, other previous sentences of detention from one month up to temporary incarceration. As a result, the whole percentage of detainees aged 14-18 amounted in that year to 6.8 %.

IX. Conditional release

It is extremely seldom that juveniles convicted to detention serve their full sentence. According to art. 129 GrPC, the Courts, in principle, will conditionally release a juvenile when half the period of detention has expired. Release takes place almost automatically and is rejected only if the court considers, on the basis of specially documented reasons, that the conduct of the juvenile while serving the term of detention makes it absolutely necessary to continue such detention so that reoffending be prevented.

Juveniles may be released at an even earlier time than half their period of detention, i.e. after in actual fact having served one third of the sentence, if serious reasons necessitate it (e.g., if the addicted juvenile has attended successfully a drug rehabilitation program). Similarly, juveniles may be released after one third of the sentence if they accept to be placed under home confinement with electronic monitoring (respectively art. 129 sec. 4 and 129 A GrPC).

It should be noted that the period of probation cannot exceed the remaining period of detention (art. 129 sec. 1 GrPC).

X. The young offender's institutions

In case of a conviction to juvenile detention, the minor, according to the Greek Correctional Code – GrCC (art. 12 and 19 sec. 3), lives separately from adults in

specially constructed institutions or in sections of adult prisons. In Greece there are two closed institutions for minor male detainees, the one in a town named Avlona, about 50 km. from Athens, and the other in the city of Volos, in central Greece. In addition, a prison farm for young offenders exists in the region of Kassavetia, about 30 km. from the city of Volos. Finally, there is a small number of young women, who live detained in the sole independent women's institution for closed detention, near Thiva, about 95 km. from Athens.

In all these institutions there are currently mainly young adults who are detained (art. 12 GrCC). Indicatively, on 1st October 2018 199 adults were detained in Avlona, 111 in Volos, 34 (+1 juvenile) in Kassavetia and 16 adults (+2 juvenile females) in Thiva.

According to this same Correctional Code (art. 12 sec. 2), in young offenders' institutions, educational and vocational training programs shall be provided. The basic education of young prisoners is obligatory (art. 35 sec. 5 GrCC). On the contrary, there is no obligation to work, but anyone who does perform work can reduce his/ her time spent in detention. Indeed, one working day counts towards two and a half days of the duration of detention and this is important for calculating the time in cases of regular leaves and of conditional release (art. 40 ff. GrCC),

XI. Detention on remand for minors

In an institution for young offenders, apart from convict minors, there are also minors under detention on remand. Yet this detention should not last, according to the law (art. 287 GrCPP), for more than six months.

This kind of detention, relating to the pre-trial stage, may be imposed (and enforced) on an accused minor when the purpose of such detention cannot be achieved by other, less burdensome measures (principle of subsidiarity), and namely by the so-called "restrictive measures", which are non-custodial: *inter alia*, bail, duty to appear at regular intervals before the competent authorities, residence restrictions, educational measures, or, in more severe cases, electronic monitoring (art. 284 sec. 7 GrCPP). More specifically, detention on remand for minors may be imposed on an accused juvenile, basically under the same general conditions as is the case with adults: no known address, preparation to facilitate escape from the country, etc. (art. 283 GrCPP). However, there are additional prerequisites for accused juveniles. Indeed, a remand order may be inflicted only to juveniles between the ages 15-18 and only if there is a compelling suspicion that the juvenile has committed a felony involving the element of violence or having been directed against life or corporal integrity of another person, similar to the already mentioned provision for juvenile detention (*supra* VIII) (art. 287 GrCPP). It is noteworthy that the investigating judge has the competence to put restrictive measures aside or to replace them with others, or to replace detention by restrictive measures and vice versa (art. 291 GrCPP).

In practice, detention on remand is imposed by the judicial authorities with a certain parsimony: 137 cases in 2012, as compared with a total of 5,547 detainees on remand

(hence, a percentage of 2.47 %). A lot of these detainees are foreigners, who usually do not have a known residence in Greece.

XII. Recent trends in juvenile delinquency

It would be useful in this overview to briefly look at the kinds of juvenile delinquency in Greece, so as to better understand the courts' lenient attitude towards young offenders.

At a general level, and leaving aside traffic offenses which form the majority (around 40% in 2010) of alleged offenses on the part of minors, their participation in the total number of alleged offenses committed in Greece does not surpass 3 %) (Greek Police Statistics).

Regarding specific offenses, simple theft is the most frequent offense in adolescence. On the other hand, an increase is observed in the last years (esp. since the 1990s) in crimes of violence (particularly robbery) and in drug related offenses. The problem seems to be more acute in case of young adults (ages 18-25), although, in order to evaluate this tendency, we also have to take into consideration the intensification of police monitoring in recent years.

XIII. Conclusion

Juvenile Justice in Greece still has problems of implementation due to the lack of appropriate personnel, esp. with regard to the Juvenile Court Aid. In addition, there are problems of infrastructure and of facilities. Yet, on the other hand, a lot of progress has been made in the last decades, especially after Greece ratified the UN Convention on the Rights of the Child in 1992, which has functioned as an impetus for necessary reforms in the field of juvenile criminal law. This became apparent, especially in 2003 and in 2010, with the adoption of innovative measures such as the introduction of complete criminal responsibility at the age of 18 (and not at 17, as was the legal age before), the extension of the catalogue of non-custodial measures, the abolition of indefinite juvenile detention, the introduction of the right to appeal against a sentence of juvenile detention, and, also, the introduction of diversion as a means to settle a criminal law conflict²

² Cf. Angeliki Pitsela, in her contribution "Greece", in: Fr. Dünkel/J. Grzywa/ Ph. Horsfield/ Ineke Pruin (eds.), *Juvenile Justice Systems in Europe*, Vol. 2, Godesberg: Forum Verlag, 2011, 623-670: 674-675; this paper is very useful at a more general level for describing in details the juvenile legal system in Greece before the amendments of the new Penal Code and the new Code of Penal Procedure in 2019; useful as regards the terminology is also the translation of the former Greek Penal Code, elaborated by Dr. Emmanouil Billis/ Dr. Vassiliki Chalkiadaki and published by the Max Planck Institute for Foreign and International Criminal Law and the Duncker & Humblot Verlag in 2017. Finally, an analysis of the socio-economic factors which, due to their malfunction may lead a minor in Greece to delinquency can be found in: Nestor Courakis, *Juvenile Delinquents and Society. A Study of the fundamental values, institutions and juvenile delinquency in Greece*, Athens/ Komotini: Ant. N. Sakkoulas Publishers, 1999.

These measures have, in my opinion, largely contributed to a reform by means of which –as was mentioned above (II)- the welfare model is combined harmoniously with the justice model “in the best interests of the child” (cf. art. 3 sec. 1 of the UN Convention on the Rights of the Child).